

## HOUSE BILL No. 2108

By Committee on Federal and State Affairs

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AN ACT concerning crime and punishment; relating to obscene materials; amending K.S.A. 21-4301a and 21-4301c and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 21-4301a is hereby amended to read as follows: 21-4301a. (a) Promoting obscenity to minors is promoting obscenity, as defined by K.S.A. 21-4301 and amendments thereto, where the recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.

(b) Notwithstanding the provisions of K.S.A. 21-3202 and amendments thereto to the contrary, it shall be an affirmative defense to any prosecution under this section that:

(1) The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more.

(2) The allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

~~(3) The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.~~

~~(4) An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.~~

(c) (1) Promoting obscenity to minors is a class A nonperson misdemeanor on conviction of the first offense.

(2) Promoting obscenity to minors is a severity level 8, person felony on conviction of a second or subsequent offense.

1 (3) Conviction of a violation of a municipal ordinance prohibiting acts  
2 which constitute promoting obscenity to minors shall be considered a  
3 conviction of promoting obscenity to minors for the purpose of deter-  
4 mining the number of prior convictions and the classification of the crime  
5 under this section.

6 (d) Upon any conviction of promoting obscenity to minors, the court  
7 may require, in addition to any fine or imprisonment imposed, that the  
8 defendant enter into a reasonable recognizance with good and sufficient  
9 surety, in such sum as the court may direct, but not to exceed \$50,000,  
10 conditioned that, in the event the defendant is convicted of a subsequent  
11 offense of promoting obscenity to minors within two years after such  
12 conviction, the defendant shall forfeit the recognizance.

13 (e) This section shall be a part of and supplemental to the Kansas  
14 criminal code.

15 Sec. 2. K.S.A. 21-4301c is hereby amended to read as follows: 21-  
16 4301c. (a) No person having custody, control or supervision of any com-  
17 mercial establishment shall knowingly:

18 (1) Display any material which is harmful to minors in such a way  
19 that minors, as a part of the invited general public, will be exposed to  
20 view such material or device;

21 (2) sell, furnish, present, distribute or disseminate to a minor, or oth-  
22 erwise allowing a minor to view, with or without consideration, any ma-  
23 terial which is harmful to minors; or

24 (3) present to a minor, or participate in presenting to a minor, with  
25 or without consideration, any performance which is harmful to a minor.

26 (b) Violation of subsection (a) is a class B nonperson misdemeanor.

27 (c) Notwithstanding the provisions of K.S.A. 21-3202 and amend-  
28 ments thereto to the contrary, it shall be an affirmative defense to any  
29 prosecution under this section that:

30 (1) The allegedly harmful material or device was purchased, leased  
31 or otherwise acquired by a public, private or parochial school, college or  
32 university, and that such material or device was either sold, leased, dis-  
33 tributed or disseminated by a teacher, instructor, professor or other fac-  
34 ulty member or administrator of such school as part of or incidental to  
35 an approved course or program of instruction at such school.

36 ~~(2) The defendant is an officer, director, trustee or employee of a~~  
37 ~~public library and the allegedly harmful material or device was acquired~~  
38 ~~by a public library and was disseminated in accordance with regular li-~~  
39 ~~brary policies approved by its governing body.~~

40 ~~—(3) An exhibition in a state of nudity is for a bona fide scientific or~~  
41 ~~medical purpose, or for an educational or cultural purpose for a bona fide~~  
42 ~~school, museum or library.~~

43 ~~(4)~~ (3) With respect to a prosecution for an act described by subsec-

1 tion (a)(1), the allegedly harmful material was kept behind blinder racks.  
2 ~~(5)~~ (4) With respect to a prosecution for an act described by subsection  
3 (a)(2) or (3), the defendant had reasonable cause to believe that the  
4 minor involved was 18 years old or over, and such minor exhibited to the  
5 defendant a draft card, driver's license, birth certificate or other official  
6 or apparently official document purporting to establish that such minor  
7 was 18 years old or more.

8 ~~(6)~~ (5) With respect to a prosecution for an act described by subsection  
9 (a)(3), the allegedly harmful performance was viewed by the minor  
10 in the presence of such minor's parent or parents or such minor's legal  
11 guardian.

12 (d) As used in this section:

13 (1) "Blinder rack" means a device in which material is displayed in  
14 such a manner that the lower  $\frac{2}{3}$  of the material is not exposed to view.

15 (2) "Harmful to minors" means that quality of any description, ex-  
16 hibition, presentation or representation, in whatever form, of nudity, sex-  
17 ual conduct, sexual excitement or sadomasochistic abuse when the ma-  
18 terial or performance, taken as a whole or, with respect to a prosecution  
19 for an act described by subsection (a)(1), that portion of the material that  
20 was actually exposed to the view of minors, has the following  
21 characteristics:

22 (A) The average adult person applying contemporary community  
23 standards would find that the material or performance has a predominant  
24 tendency to appeal to a prurient interest in sex to minors;

25 (B) the average adult person applying contemporary community stan-  
26 dards would find that the material or performance depicts or describes  
27 nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a  
28 manner that is patently offensive to prevailing standards in the adult com-  
29 munity with respect to what is suitable for minors; and

30 (C) a reasonable person would find that the material or performance  
31 lacks serious literary, scientific, educational, artistic or political value for  
32 minors.

33 (3) "Material" means any book, magazine, newspaper, pamphlet,  
34 poster, print, picture, figure, image, description, motion picture film, rec-  
35 ord, recording tape or video tape.

36 (4) "Minor" means any unmarried person under 18 years of age.

37 (5) "Nudity" means the showing of the human male or female geni-  
38 tals, pubic area or buttocks with less than a full opaque covering; the  
39 showing of the female breast with less than a full opaque covering of any  
40 portion thereof below the top of the nipple; or the depiction of covered  
41 male genitals in a discernible state of sexual excitement.

42 (6) "Performance" means any motion picture, film, video tape, played  
43 record, phonograph, tape recording, preview, trailer, play, show, skit,

1 dance or other exhibition performed or presented to or before an audi-  
2 ence of one or more, with or without consideration.

3 (7) "Sodomasochistic abuse" means flagellation or torture by or upon  
4 a person clad in undergarments, in a mask or bizarre costume or in the  
5 condition of being fettered, bound or otherwise physically restrained on  
6 the part of one so clothed.

7 (8) "Sexual conduct" means acts of masturbation, homosexuality, sex-  
8 ual intercourse or physical contact with a person's clothed or unclothed  
9 genitals or pubic area or buttocks or with a human female's breast.

10 (9) "Sexual excitement" means the condition of human male or fe-  
11 male genitals when in a state of sexual stimulation or arousal.

12 (e) The provisions of this act shall not apply to a retail sales clerk, if  
13 such clerk has no financial interest in the materials or performance or in  
14 the commercial establishment displaying or selling, furnishing, present-  
15 ing, distributing or disseminating such materials or presenting such per-  
16 formance other than regular employment as a retail sales clerk. The pro-  
17 visions of this section shall not exempt any retail sales clerk from criminal  
18 liability for any act unrelated to regular employment as a retail sales clerk.

19 (f) If any provision or clause of this act or application thereof to any  
20 person or circumstance is held invalid, such invalidity shall not affect  
21 other provisions or applications of the act which can be given effect with-  
22 out the invalid provision or application, and to this end the provisions of  
23 this act are declared to be severable.

24 (g) This section shall be part of and supplemental to the Kansas crim-  
25 inal code.

26 Sec. 3. K.S.A. 21-4301a and 21-4301c are hereby repealed.

27 Sec. 4. This act shall take effect and be in force from and after its  
28 publication in the statute book.

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